

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18377
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On October 15, 2004, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for refund of Idaho individual income taxes of \$801 for the period ending December 31, 2000.

The taxpayer's accountant filed a timely protest and petition for redetermination of the refund denial. A teleconference was held on December 14, 2004. The taxpayer, his accountant, [Redacted], Commissioner [Redacted], and [Redacted], Tax Appeals Specialist, participated in the conference. The Tax Commission has reviewed the file, is advised of its contents and hereby issues its decision.

The Tax Commission received the taxpayer's 2000, 2001, and 2002 Idaho individual income tax returns on August 30, 2004. The 2000 return reflected an overpayment of income tax in the amount of \$801. The return was submitted for processing and a computer-generated letter was mailed to the taxpayer. The letter advised the taxpayer that his refund was going to be denied because the time to claim the refund had expired.

The taxpayer, through his accountant, sent a letter of protest. A deficiency notice was mailed to the taxpayer to allow him an opportunity for an administrative appeal. The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-3035(e) limits the time for an employee to claim a credit or refund of

monies that have been deducted from wages as follows:

Idaho Code § 63-3035 . . .(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. **No credit or refund shall be made to an employee who fails to file his return, as required under this chapter, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited.** In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. (Emphasis added.)

Idaho Code 63-3072(c) provides for a limit on the time to claim a refund of overpaid income taxes:

Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid **shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed.** (Emphasis added.)

The period of limitation with respect to claiming a refund or credit of taxes shown in the taxpayer's 2000 Idaho income tax return expired on April 15, 2004. The taxpayer did not file a claim for refund until August 30, 2004, the date of mailing.

The taxpayer's representative said in her protest letter that the taxpayer had extenuating circumstances that prevented him from filing his returns timely. She said, because of a nasty divorce with child custody and support issues, the taxpayer was in danger of having his refunds seized if he filed his returns. Now that the matter has been settled and the liens on the taxpayer's refunds have been released, the taxpayer has filed his returns.

On December 14, 2004, a telephone conference was held wherein the accountant and the taxpayer explained further about the child support issue that influenced the decision to delay the filing of the taxpayer's Idaho income tax returns. After the conference, the accountant faxed the District Court Order addressing the custody and child support issues. That Order was signed on June 3, 2003. The taxpayer's delinquent returns were filed August 30, 2004.

The taxpayer asked the Commission to consider making an exception to the law. Idaho Code §§ 63-3047 and 63-3048 allow the Tax Commission to make such agreements with taxpayers if certain conditions exist. IDAPA 35, Title 02, Chapter 01, Tax Commission Administration and Enforcement Rule 500.01 describes the conditions:

500. ADJUSTED OR COMPROMISED CASES – CLOSING AGREEMENTS (RULE 500).

Sections 63-3047 and 63-3048, Idaho code.

- 01. Grounds For Compromise.** The Tax Commission may compromise the tax liability, penalties, or both, of a case if one (1) or more of the following circumstances exist;
 - a.** Doubt as to liability.
 - b.** Doubt as to collectibility; or
 - c.** Extreme hardship of the taxpayer.

The circumstances of this case do not deal with a liability so there is no doubt as to liability or doubt as to collectibility. The taxpayer submitted a current Financial Statement to the Commission for consideration. The Financial Statement does not establish that the denial of the taxpayer's 2000 refund would create an extreme hardship for the taxpayer.

Idaho Code § 63-3072 is clear and unequivocal. The language in this section "shall be made . . ." is not discretionary, but rather, it is mandatory. The Tax Commission finds Idaho Code § 63-3072(c) and § 63-3035(e), cited above, are controlling with respect to the taxpayer's refund claim for tax year 2000. The withholding will be allowed to offset the tax due for 2000. However, no credit or refund will be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated October 15, 2004, that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2005, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]